

# **Open Enrollment Appeal Process**

Sheri Berkani, DPI Staff Attorney

Wisconsin Department of Public Instruction

# 244 Appeals filed in 1998

	<b>Total Appeals</b>	<b>SD Upheld</b>	<b>SD Overturned</b>	<b>Dismissed / Informal Resolution</b>
<b>Statewide</b>	<b>244</b>	<b>82</b>	<b>119</b>	<b>43</b>
<b>Milwaukee</b>	<b>90</b>	<b>0</b>	<b>64</b>	<b>26</b>
<b>State, excluding Milwaukee</b>	<b>154</b>	<b>82</b>	<b>55</b>	<b>17</b>

# Reasons for Appeal

- ★ Timeliness of Notifications
- ★ Process used for random selection and preferences
- ★ Space determinations
- ★ Special Education Services

# Reasons School Boards were not upheld

- ★ Misapplication of law
- ★ Lack of information provided to the dept.
- ★ Lack of *evidence* of a process used to make determinations

# The Denial Notice

- ★ Provide all reasons denial was made
- ★ Write it so that the parent can understand it
- ★ Informative letters can thwart an appeal
- ★ Notice of Right to Appeal

# Timeliness of Notification

- ★ Document when application was received
  - Consistent recording of date/time the application is received by the Non-resident school district
- ★ Document what is done with the application after receipt
  - Record of when copy is sent to the resident district
  - Consider using certified mail or return receipts signed by the resident district.
- ★ Document when acceptance or denial notice is sent and received.
  - Use certified mail to notify of denial

# Random Selection and Preferences

- ☆ Document the Random Selection Process
  - **Who is present?**
  - **How are names, numbers, seats assigned**
  - **How was the selection conducted**
- ☆ Document who is given preference and why
- ☆ Keep detailed minutes, tape or transcript of meeting where selection process is conducted

# Space Determinations

- ☆ Document how determinations were made
  - **It is not enough to say “There is no room”**
  - **Student-teacher ratio -provide support that this ratio is actually in practice, and if not, what is being done to achieve it**
  - **Exceptions from a space determination for one child - be sure to explain why an exception was not made for other children**



# Space Determinations - cont.

- Provide enrollment numbers, classroom size, class size, school size, school capacity to support your decision
- Provide any other documentation to support your class size or capacity determination that was used by the board

# Special Education Space

- ☆ “No program available, no services available or no room”
  - Provide evidence that each applicant and his or her needs were considered individually
  - Provide evidence that the IEP was obtained and considered

# Special Education Space

- Avoid blanket statements, such as “program is full”. Services required by the individual’s IEP must be considered, not “label”
- Be sure enrollment numbers you use are the same as what has been submitted to DPI for other purposes, if different, explain

# Undue Financial Burden

- ★ Only available as a reason to deny transfer *OUT* of district
- ★ Document all factors you considered in making this determination, include cost savings, continued costs, additional costs, etc.
- ★ Utilize the DPI's Appeal worksheet & provide all information requested

# Compiling the Record

- ★ Submit all documentation - if in doubt, include it
- ★ File a “brief”
- ★ If documentation is unclear or not specific, use affidavits to explain process
- ★ Provide evidence of your process, which must include a winnowing and sifting of information

# **Key Ingredients of Responding to an Appeal**

- ★ A copy of the application, stamped with the date received
- ★ A copy of the denial notice, including proof of service upon the pupil/parents
- ★ A copy of the school board policy and administrative rules or procedures

# **Key Ingredients of Responding to an Appeal**

- ★ Minutes, tape recording or transcript of all meetings or hearings where open enrollment was discussed either generally or as it pertains to the appellant
- ★ Documentation to support space or financial burden determinations

# **Key Ingredients of Responding to an Appeal**

- ★ Supplemental information that was used to make determinations, including previous reports, studies, etc. that the board or administration relied upon and affidavits to explain procedures that were used
- ★ Respond to issues raised by the parent in the appeal letter, even if they do not seem to be relevant